Remarks

Claims 13-18 and 21-28 are pending. Claims 13-18 and 21-28 are rejected.

Claim Rejections – 35 U.S.C. § 102(b)

The Examiner has rejected claims 21-23 under 35 U.S.C. § 102(b) as being anticipated by Lowthert et al. (U.S. Pat. Pub. 2002/0100043 A1), herein Lowthert. The Applicant includes the following comments to clearly distinguish the claimed invention over the art cited by the Examiner, and respectfully requests a favorable reconsideration of claims 21-23.

For a claim to be anticipated, each and every non-inherent limitation must be disclosed in a single reference, in accordance with MPEP Section 2131.

Regarding claim 21, which recites:

> "A method of sequencing at least two disparate cohesive signal sets comprising:
>
> transmitting a first cohesive signal set at a first time, said **first cohesive signal set including** an electronic cache marker and an electronic **instruction to a local storage cache to retain** said first cohesive signal set in a local cache;
>
> transmitting a second cohesive signal set at a second time, said **second cohesive signal set including** an electronic **recall marker** that uniquely identifies the cache marker of the first cohesive signal set and that **directs a receiver to sequence** said first cohesive signal set with said second cohesive signal set when said second signal cohesive set is output from the receiver" (emphasis added).

The Examiner asserts that Lowthert teaches:

> "transmitting a first signal set at a first time, said first cohesive signal set including an electronic cache marker and an electronic instruction to a local storage cache to retain said first cohesive signal set in a local cache (see [figs. 2-4], [0025], [0030], [0039], [0048] where an info segment which includes an info segment header and can be linked to a content identifier where a series of executable instructions enable it to be stored on the local device if necessary).
>
> Lowthert further discloses transmitting a second cohesive signal set at a second time, said second cohesive signal set including an electronic recall marker that uniquely identifies the cache marker of the first cohesive signal set (see [fig. 6], [0039] for unique identification using pointers) and that directs a receiver to sequence said first cohesive signal set with said second cohesive signal set when said second signal cohesive set is output from the receiver (see [0029], [0030], [0032], [0039] where the program data stream includes a info data segment header which can be sequenced in any order when output

from the receiver)" (emphasis added).

The Applicants respectfully assert that the Examiner has misinterpreted the teachings of Lowthert.

Consider the disclosure of Lowthert:

> "FIG. 3 illustrates one exemplary embodiment of an info segment which may be provided over the info segment link from the info segment server. In some embodiments of the program of FIG. 2, there may be an implicit association between the info segment header and the content item. For example, if the program is provided on a videotape which contains only a single movie--the content item--there will be a single info segment for that movie. In such a case, the content identifier may be regarded as null. The null content identifier may be one that is ignored, or there may simply not be one. In other embodiments, in which the association between the info segment and the content item is not implicit, the info segment will contain a non-null content identifier (Content ID) which specifies with which content item the info segment is associated. In one embodiment, the content identifier may be, for example, a copy of (or a hashed value of) an initial portion of closed caption text in the content item. In another embodiment, the content identifier may be **a programming guide reference number of the program**, such as a VCR+ number. Other associative mechanisms will be apparent to the reader upon studying this disclosure" (paragraph [0030], emphasis added).
>
> "FIG. 6 illustrates another alternative embodiment of the program, in which the **info segment is not actually inserted into the program**. In the embodiment illustrated by FIG. 5, it was **assumed that the info segment had been captured by the receiver**, either at the time it was originally broadcast (even though the viewer had not yet tuned in that particular broadcast), or immediately when the viewer tuned in that program. This may not always be practical, in some cases due to the size o the info segment and the limited storage provided in the receiver. As illustrated in FIG. 6, the **program may contain info segment pointers** (Info Segment Pointer), such as URLs or the like, which take far less bandwidth and storage than the complete info segment. Thus, the pointers may be repeated periodically throughout the broadcast of the content item. The first time the receiver encounters a pointer, it may fetch the info segment" (paragraph [0039], emphasis added).
>
> "The reader should appreciate that FIGS. 8-12 each **represents both a process** for performing a respective method, as well as a recordable medium or other instruction delivery mechanism in which is encoded or recorded or otherwise represented a series of **instructions, routines, firmware, or control codes** or the like which, when executed by a computer device or loaded as firmware or control

> codes into a programmable hardware device or provided as inputs to a runtime interpreter or the like, cause such hardware or software to perform the respective method" (paragraph [0048], emphasis added).

Lowthert states that it is "**assumed**" that the info segment had been captured by the receiver". Clearly, the info segment is not described as including "instruction to a local storage cache to retain said first cohesive signal set in a local cache".

Further, while "FIGS. 8-12" may represent "instructions", this does not disclose or suggest that the "info segment" contains "instruction to a local storage cache to retain said first cohesive signal set in a local cache" as in claim 21.

Furthermore, consider that Lowthert describes that the "first time the receiver encounters a pointer, it may fetch the info segment". As described in paragraph [0039] this is due to the speculation in Lowthert that it may not always be practical to assume "that the **info segment** had been captured by the receiver". Thus, what is described is the receiver requesting the "info segment".

After this, it appears the receiver follows the method described in paragraphs [0045-0047], where the "receiver waits (108) until play reaches the first interruption point **identified in the info segment**" "then the Receiver interrupts play of the content and begins (113) playing the ad instead". Thus, Lowthert discloses that the **info segment** directs the receiver to sequence the content with the ad.

Assuming arguendo that the ad is analogous to the "first cohesive signal set" and the content is analogous to the "second cohesive signal set" (with which the Applicants do not agree), then the teaching of Lowthert is in contradiction to the "**second** cohesive signal set including an electronic recall marker that... **directs a receiver to sequence** said first cohesive signal set with said second cohesive signal set when said second signal cohesive set is output from the receiver" as in claim 21.

Clearly, Lowthert does not disclose each and every non-inherent limitation of claim 21. Thus, Lowthert does not anticipate claim 21.

For at least these reasons, claim 21 is in condition for allowance. As claims 22 and 23 depend upon claim 21, they are likewise in condition for allowance.

The Examiner is respectfully requested to reconsider and remove the rejection under 35 U.S.C. 102(b) based on Lowthert, and to allow claims 21-23.

Claim Rejection - 35 U.S.C. 103(a)

The Examiner has rejected claims 13, 16-17 and 24-26 as being unpatentable under 35 U.S.C. 103(a) over Lowthert in view of Wachtfogel et al. (U.S. Patent No. 7,340,760 B2), herein Wachtfogel. The Applicant includes the following comments to clearly distinguish the claimed invention over the art cited by the Examiner, and respectfully requests a favorable reconsideration of claims 13, 16-17 and 24-26.

These rejections are respectfully disagreed with, and are traversed below.

It is well established law that in order for an obviousness rejection to be proper, the Patent Office must meet the burden of establishing a prima facie case for obviousness. Thus, as interpreted by the Courts, the Patent Office must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that in accordance with *In re Lee*, the prior art must contain a suggestion, teaching, or motivation for one of ordinary skill in the art to modify a reference or combine references; and that the proposed modification must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made.[1]

Regarding claim 13, which recites:

> "A method for time-shifting at least one of a plurality of received cohesive signal sets, comprising:
>
> receiving a first cohesive signal set comprising a cache marker at a first time;
>
> **based on the presence of the cache marker**, **automatically storing** said first cohesive signal set in a computer readable storage medium;
>
> receiving a **second** **cohesive signal set comprising a** **recall marker** at a second time; and
>
> in response to a user request for the second cohesive signal set, matching the recall marker to the cache marker of the first cohesive signal set and outputting the requested second cohesive signal set and the first cohesive signal set in a timed relation relative to one another that differs from a timed relation in which they were received, wherein **the output timed relation is determined** **by the recall marker**" (emphasis added).

As seen above, Lowthert does not disclose or suggest a "**second** cohesive signal set including an electronic recall marker that... **directs a receiver to sequence** said first cohesive signal set with said second cohesive signal set when said second signal cohesive set is output from the receiver". Clearly, Lowthert does not disclose or suggest "the output timed relation is **determined by the recall marker**" in the "second cohesive signal set" as in claim 13.

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[1] *In Re Fine, 5 U.S.Q.2d 1596, 1598 (Fed. Cir. 1988); In Re Wilson, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); Agmen v. Chugai Pharmaceuticals Co., 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996); In Re Sang Su Lee, 277 F.3d 1338, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002).*

Wachtfogel is not suggested as teaching this element of claim 13.

As seen above, Lowthert does not disclose or suggest that the info segment includes "instruction to a local storage cache to retain said first cohesive signal set in a local cache". Likewise, Lowthert does not disclose or suggest "**automatically storing** said first cohesive signal set in a computer readable storage medium" "**based on the presence of the cache marker**" as in claim 13.

Wachtfogel is not suggested as teaching this element of claim 13.

Neither Lowthert nor Wachtfogel disclose or suggest "the output timed relation is determined by the recall marker" or "automatically storing said first cohesive signal set in a computer readable storage medium" "based on the presence of the cache marker" as in claim 13. Therefore, the combination of Lowthert and Wachtfogel (which the Applicants do not assert there is a motivation or teaching to combine), herein Lowthert-Wachtfogel, also does not disclose or suggest claim 13.

Even if one were to combine Lowthert and Wachtfogel, it is unclear what the resulting combination would provide. Would it provide ads indicating interruption points in a content item, which the user may delay showing (see Abstract of Wachtfogel)?

Clearly, Lowthert-Wachtfogel does not disclose or suggest "the output timed relation is determined by the recall marker" or "automatically storing said first cohesive signal set in a computer readable storage medium" "based on the presence of the cache marker" as in claim 13. Therefore, Lowthert-Wachtfogel does not make obvious claim 13.

For at least these reasons, claim 13 is in condition for allowance. As claims 16-17 and 24-26 depend upon claim 13, they are likewise in condition for allowance.

The Examiner has rejected claims 14, 15, 18, 27 and 28 as being unpatentable under 35 U.S.C. 103(a) over Lowthert in view of Wachtfogel and Picco et al. (U.S.

Patent No. 6,029,045), herein Picco. The Applicant includes the following comments to clearly distinguish the claimed invention over the art cited by the Examiner, and respectfully requests a favorable reconsideration of claims 14, 15, 18, 27 and 28.

As seen above, Lowthert does not disclose or suggest claim 21. As claim 21 is allowable over Lowthert then all claims that depend from claim 21 should also be allowable over Lowthert, whether considered alone or in combination with other art cited as applied by the Examiner. For at least this reason, claim 28 is in condition for allowance.

As seen above, Lowthert-Wachtfogel does not disclose or suggest claim 13. As claim 13 is allowable over Lowthert-Wachtfogel then all claims that depend from claims 13 should also be allowable over Lowthert-Wachtfogel, whether considered alone or in combination with other art cited as applied by the Examiner. For at least this reason, claims 14, 15, 18 and 27 are in condition for allowance.

In light of the discussion above, the Applicant respectfully asserts that a prima facie case for obviousness was not presented as required by the court in *In re Lee*. As such, the Applicant respectfully requests that the Examiner reconsider and withdraw these rejections to claims 13-18 and 21-28.

For the foregoing reasons, the Applicants believe that each and every issue raised by the Examiner has been adequately addressed and that this application is in a condition for allowance. As such, early and favorable action is respectfully solicited.

Respectfully submitted:

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